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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,754	11/21/2003	Mogens N. Olescn	EVIP0009-APP	3682
7590	03/08/2004		EXAMINER	
Poulsen Roser Pacific, Inc. 620 South Front Street Central Point, OR 97502			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/719,754	OLESEN ET AL.
	Examiner Kent L. Bell	Art Unit 1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

application filed 11/21/03

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11/21/03 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 2, line 7, Applicants state "Section – *viticella*". "*viticella*" is not a recognized section it is a recognized species. It appears applicant may have intended to state --Species-- rather than "Section". Correction and/or clarification is necessary.

B. Page 5, lines 11-16, Applicants should set forth in the specification a brief comparison between the instant plant and at least its female parental cultivar. Such not need be in any great detail but should at least distinguish the plants from each other.

Detailed Action

C. Page 6, line 25, and page 7, line 10, Rather than stating “sepals” and “sepal”, respectively, applicants should state --tepals-- and --tepals--, respectively, as this is the more proper biological term to use for this characteristic.

D. Page 7, line 10, Applicants state “reverse”. This recitation is unclear as it is not understood what applicant intends “reverse” to mean. It appears applicant may intend “reverse” to mean “undersurface”. If such is accurate then such should be stated in the specification to avoid confusion.

E. Page 7, line 20 to page 8, line 7, Applicants should set forth in the specification additional information relative to the instant plant’s tepals including the typical and observed tepal base descriptor and coloration (both surfaces) with reference to the employed color chart.

It is noted that applicants have set forth a coloration at lines 6-8 of the same page. However, it is uncertain if these colorations set forth are for tepal coloration, flower coloration, or something else. Applicants should set forth in the specification under the “Tepals” subheading tepal colorations as set forth above.

F. Page 8, lines 8-20, Applicants should set forth in the specification the number of pistils per flower.

Detailed Action

G. Page 9, lines 2 and 3, Applicants should set forth in the specification the typical and observed plant spread or diameter.

H. Page 9, lines 20 and 21, Applicants set forth a leaf size but it is unclear whether the size set forth is for the entire leaf or a single leaflet. Applicants should set forth in the specification the typical and observed leaf and leaflet length and diameter.

I. Page 9, line 25 and page 10, line 1, Applicants state "New growth: [RHS No.]" and "Older growth: [RHS No.]". Applicants should clarify these recitations and set forth an RHS designation if that is what is intended.

J. Page 10, line 7, Applicants state "Incidence:". This recitation is not understood as it is unclear what applicants are intending. Correction and/or clarification is necessary.

K. Page 11, line 4, Applicants state "[anything?]". Applicants should clarify this recitation and set forth a disease if that is what is intended.

KZB 3/2/04

L. ~~Applicants should set forth in the specification the instant plant's winter hardiness.~~

Detailed Action

M. Page 5, line 15, Applicants state "of the applicant". It appears applicants may have intended to state --'EVIpo009'--. Correction and/or clarification is necessary.

N. Applicants should set forth a new claim such as --A new and distinct variety of Clematis plant, substantially as herein shown and described.-- as the specification already contains the descriptive information set forth in the current claim. Further, the claim suggested above encompasses the entire plant in which it's characteristics have been set forth in the specification (i.e. described). Therefor, adding more detail than what is in the claim suggested above is unnecessary.

O. Abstract, line 8, Applicants should insert --asexual-- before "propagation" to clearly set forth the type of propagation done (Page 3, line 21).

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Detailed Action

Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Comments

Applicants should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/revamdtprac.htm>

Applicants should send all correspondence to the following address:

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Detailed Action

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

KENT BELL
PRIMARY EXAMINER

Kent L. Bell